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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,127	10/22/2003	Ruel W. Scott	MYO0002/US	5343

33072 7590 08/23/2004

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EXAMINER

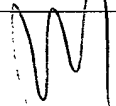
DAHBOUR, FADI H

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/691,127	Applicant(s) SCOTT, RUEL W. 	
	Examiner Fadi H. Dahbour	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-12 and 15-20 is/are rejected.
- 7) ☒ Claim(s) 5-8, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/15/04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 15-16, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ordway.

Ordway discloses an apparatus capable of preventing a sleeping person from assuming a supine position (Figs.1-9), comprising a flexible elongated waist belt having a first surface and a second surface opposite the first surface and a sufficient length to encircle the waist of a person (102, 103 of Figs.1, 4-9), a motion-limiting member protruding from the first surface of the belt and extending along at least a portion of the length of the belt and comprising a body of a size sufficient to prevent a person from moving into the supine position during sleep when the motion-limiting member is located proximal to the lumbar spine area (100 of Figs.1, 7, 9), wherein the motion-limiting member comprises first and second side surfaces extending from the belt (100 of Figs.1, 7, 9) and having a thickness extending about three inches from the belt (100 of Figs.1, 7, 9), wherein the motion-limiting member has a length in the range from 8 to 20 inches (100 of Figs.1, 7, 9) and the first and second side surfaces have a thickness extending about three inches from the belt (100 of Figs.1, 7, 9), wherein the motion-limiting member comprises at least a first body segment and a second body segment

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adjacent to the first body segment wherein the first body segment is more rigid (140 of Fig.7) than the second body segment (100 of Fig.7), further comprising securing the belt around the waist of the body so the motion-limiting member is located proximal to the lumbar region of the person (Fig.9), and wearing the apparatus during sleep (see "while lying down" in lines 65-66 of col.3), a therapeutic device (see "therapeutic corset" in lines 23-24 of col.1, and also see "corset" in line 55 of col.3) located along at least a portion of the length of the belt (100 of Figs.1, 7, 9) and sized and positioned to provide therapy to the lumbar spine area (Fig.9).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-11, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ordway in view of Toso.

Ordway, as described above, discloses all the features claimed except lower body apparel. Toso discloses lower body apparel (Fig.5). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the feature taught by Toso, in the device of Ordway, because Ordway further discloses "fanny pack" (see line 3 of abstract of Ordway), and Toso teaches that regarding fanny packs, it's possible for a fanny pack to be worn in combination with lower body apparel (see "fannypacks" in line 7 of col.1, and also see Fig.5 of Toso).

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5. Claims 9, 12, 18, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ordway in view of Perkins.

Ordway, as described above, discloses all the features claimed except a massaging device. Perkins discloses a massaging device (see "massages" in line 8 of col.23). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the feature taught by Perkins, in the device of Ordway, because Perkins teaches that it "promote circulation, supply oxygen to the muscles and remove toxins, minimize muscle fatigue and muscle stiffening" (see lines 9-11 of col.23 of Perkins).

Allowable Subject Matter

6. Claims 5-8, 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rotter, Mann, Pearcey, Gates and Richards et al are cited to show supports.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 703-306-5479. The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (703) 308-0101. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fadi H. Dahbour
Examiner
Art Unit 3743